

CHILDREN AND FAMILIES

OFFICE OF LICENSING

Physical Plant Requirement for All Centers

Adopted Emergency and Concurrent Proposed Amendments with

Recodification: N.J.A.C. 10:122-5.2(i)

Authorized By: John A. Ducoff, Director of Legal Affairs and Regulatory Oversight, Department of Children and Families.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)):

Authority: N.J.S.A. 9:3A-7(f), 30:5B-5.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2006 .

Emergency Adoption Effective Date: October 17, 2006.

Emergency Adoption Expiration Date: December 16, 2006.

Submit comments by December 6, 2006 to:

Gary Sefchik

Office of Licensing

Department of Children and Families

P.O. Box 707

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This is an emergency adoption and concurrent proposed amendments with recodification by the Department of Children and Families to require applicants for new child care center licenses and those seeking to renew their licenses to certify that the building housing the child care center was not previously used in a way which poses an

environmental concern. In the event that the building was used in such a fashion, the applicant must certify that certain requirements regarding those environmental concerns have been met. The rule is proposed for adoption on an emergency basis and will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14b-4(c) as implemented by N.J.A.C. 1:30-6.5(b)). Concurrently, the provisions of this emergency adoption are proposed for readoption with amendment pursuant to the normal rulemaking requirements of the Administrative Procedures Act, N.J.S.A. 52:14b-1 et seq. The rule will become effective upon acceptance for filing by the Office of Administrative Law (N.J.A.C. 1:30-6.5(d)) if filed on or prior to the emergency expiration date.

The agency emergency adoption and concurrent proposed amendment follows:

### Summary

The proposed amendment was developed by the Department of Children and Families (the Department), the Department of Environmental Protection, the Department of Health and Senior Services, and the Department of Community Affairs in response to the recent discovery that a child care center in Gloucester County operated for two years on a site with environmental concerns. Under the authority granted to the Commissioner of the Department pursuant to N.J.S.A. 9:3A-7(f) and

30:5B-5, the Department seeks to promulgate rules that will attempt to ensure that such a situation will not recur.

Proposed N.J.A.C. 10:122-5.2(i) requires applicants, at the time of initial application, renewal, or at any other time requested by the Office of Licensing, to certify that the building housing the child care center never housed a use which could be classified as a nail salon or dry cleaner, high hazard or factory or industrial pursuant to N.J.A.C. 5:23. If the building housed such a use or the use would have been classified as such had the Uniform Construction Code been in existence, the facility operator must certify that the center complies with the requirements of the Department of Environmental Protection and the Department of Health and Senior Services with regard to soil and indoor environmental conditions, respectively. In all cases, the facility operator must certify that the center provides safe drinking water and complies with all other Departmental regulations regarding lead, asbestos, and radon. Effective January 1, 2007, the Office of Licensing will not issue initial or renewal licenses to child care centers located in the same building or structure as a dry cleaner or nail salon unless the facility operator provides indoor air sampling results which demonstrate that there is no impact on the child care center. Effective June 1, 2007, a No Further Action from DEP must be submitted by the applicant in order to obtain or renew a license to operate a child care center. Said letter may also be requested at other times, at the discretion of OOL.

Current N.J.A.C. 10:122-5.2 (i) – (q) is being recodified as N.J.A.C. 10:122-5.2 (j) – (r).

### Social Impact

The proposed amendment was developed by the Department of Children and Families (DCF), the Department of Environmental Protection, the Department of Health and Senior Services, and the Department of Community Affairs after it was discovered that a child care center in Gloucester County operated for two years on a site with environmental concerns. The proposed amendment is intended to protect children from such concerns. There are approximately 4,300 licensed child care centers in New Jersey. These centers have the capacity to serve 329,769 children. Children attending these child care centers will be affected by this amendment because it seeks to ensure that they will receive care in centers without environmental concerns. The staff at these centers may also benefit as well.

It is expected that reaction to the amendment will be positive as the amendment seeks to protect the health and safety of children.

### Economic Impact

The Department expects that the proposed rule will result in increased costs to the Department and the Attorney General's Office as there may be additional appeals by those who are denied licenses. DEP

and DHSS may experience increased costs as the operators of child care centers and applicants for licenses request information about environmental conditions near their facilities.

In addition, operators of child care centers may face increased costs in the event they are required to test for and remediate environmental concerns in order to obtain, retain or renew a license. It is difficult to assign a specific dollar value to the impact of the proposed rule and amendments due to the variability in the complexity of contaminated sites throughout the state, including such factors as historical use of the site and the selected remedy. The Department estimates that the cost of a simple site investigation may vary from \$1,000 to \$15,000 depending on the number of areas of concern at the site and the nature of the contamination. At a more complex site (one at which there are twenty or more areas of concern) the cost of a site investigation may range from \$20,000 to \$300,000. The range in costs for a remedial investigation can be from \$17,000 to \$36,000 at a site with one to three areas of concern to \$170,000 to \$450,000 at a more complex site. Some of these centers may close, resulting in the loss of jobs if the costs of remediation are high.

#### Federal Standards Statement

The proposed rule is not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required for this rule making.

### Jobs Impact

The Department expects that there may be a loss of jobs if some of the smaller child care centers are found to be near contaminated sites. There are 130 child care centers that serve 6 to 15 children. There are 757 centers serving 16 to 30 children. Some of these centers may close, resulting in the loss of jobs if the costs of remediation are high. However, other centers may open at different locations without environmental concerns in order to meet the demand for child care services and, in that event, will create additional jobs.

### Agriculture Industry Impact

The proposed amendment has no impact on the agriculture industry.

### Regulatory Flexibility Statement

The proposed amendment imposes reporting, recordkeeping and compliance requirements as defined by N.J.S.A. 52:14B-16 et seq. The rule will apply to the approximately 4,300 child care centers operating in New Jersey in addition to any new applicants for licenses. The compliance requirements under proposed N.J.A.C. 10:122-5.2(i) are discussed in the Summary above.

The overall cost to small businesses will depend upon whether there is an environmental concern and, if so, the type of concern. It may be

necessary for small business to hire professionals to correct the environmental hazards. The compliance costs under proposed N.J.A.C. 10:122-5.2(i) are discussed in the Economic Impact Statement above.

The rule does not allow differing standards for small and large businesses as the primary purpose of the rule is to protect children from environmental hazards.

### Smart Growth Impact

The Department does not anticipate that the amendment will impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus):

## CHAPTER 122 MANUAL OF REQUIREMENTS FOR CHILD CARE CENTERS

### SUBCHAPTER 5. PHYSICAL FACILITY REQUIREMENTS

10:122-5.2 Physical plant requirements for all centers

(a) – (h) (No change.)

(i) Environmental condition precautions are as follows:

1. At the time of the initial application, any renewal application, relocation of an existing licensed center and, in the discretion of the Office of Licensing, any other time, the applicant/facility operator shall submit a written certification to the Office of Licensing indicating whether the building has ever housed a use that was classified under the Uniform Construction Code, N.J.A.C. 5:23, as any of the following:

- i. Group F - factory/industrial
- ii. Group H - high hazard
- iii. Group S - storage
- iv. Group B - dry cleaners or nail salons

2. For those buildings that predate the Uniform Construction Code, the facility operator shall certify whether the building ever housed a use that would have been classified as any of those uses had the Uniform Construction Code been in effect.

3. In the event that the building housed a use that was or would have been classified as any of those uses listed in 1 above, the facility operator shall certify in writing to the Office of Licensing that the site of the center:

- i. Complies with the soil guidelines issued by the Department of Environmental Protection (DEP) pursuant to N.J.A.C. 7:26E; and
- ii. That the facility operator has contacted the Department of Health and Senior Services regarding indoor environmental



conditions and the Department of Environmental Protection to determine what further steps, if any, are necessary to address the risks posed by the prior historical use, and that the facility operator has complied with all corrective actions recommended by those agencies.

4. At the time of the initial application, any renewal application, relocation of an existing licensed center and, in the discretion of the Office of Licensing, any other time, the applicant/facility operator shall certify in writing that the center provides a potable water supply provided by a public community water system. If the facility or site is not provided a potable water supply by a public community water system, the applicant shall provide potable water sampling results demonstrating compliance with Maximum Contaminant Levels for all contaminants required to be tested pursuant to N.J.A.C. 7:10-5.1 et seq. for Non-Transient, Non-Community (NTNC) water systems, regardless of whether they meet the definition of NTNC systems as defined at N.J.A.C. 7:10-1.3. This sampling shall have been conducted within three years of the date of application submission, except nitrates and coliform, for which the sampling shall have been conducted within 90 days of submitting the application; and

5. At the time of the initial application, any renewal application, relocation of an existing licensed center and, in the discretion of the Office of Licensing, any other time, the applicant/facility operator shall certify in writing that the center complies with all existing Department of Children

and Families regulatory requirements for child care centers with respect to radon, asbestos and lead listed in N.J.A.C. 10:122-5.2(a)14, 5.2(h) and 5.2(j).

6. Effective June 1, 2007, at the time of the initial application, any renewal application, relocation of an existing licensed center and, in the discretion of the Office of Licensing, any other time, the facility operator shall submit to the Office of Licensing a No Further Action letter from the Department of Environmental Protection which indicates that no further remediation is needed for the site on which the center is located.

7. Effective January 1, 2007, the Office of Licensing shall not issue licenses or renewals to child care centers that are co-located in a building or other structure that contains a dry cleaner or nail salon unless the applicant obtains indoor air sampling that demonstrates that there is no impact to the child care center.

**Recodify existing (i) – (q) as (j) – (r). No change in text.**

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John A. Ducoff  
Director of Legal Affairs  
and Regulatory Oversight

Date \_\_\_\_\_

AGENCY STATEMENT OF IMMINENT PERIL

The Department of Children and Families is adopting N.J.A.C. 10:122-5.2(i) to require applicants to require new child care center licenses

and those seeking to renew their licenses to certify that the building housing the child care center was not previously used in a way which poses an environmental concern. If the building housed such a use, the applicant must certify that the center complies specified requirements. The immediate adoption of this rule is essential to protect the safety of children attending child care centers. It was recently discovered that a child care center in Gloucester County was allowed to operate for two years even though the site had environmental concerns. The immediate adoption of this rule is essential because it will allow the Office of Licensing to immediately require child care center operators to certify that the centers are not being operated on sites with environmental hazards. Failure to adopt the proposed rule could result in the unnecessarily exposing children to environmental contaminants.

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John A. Ducoff  
Director of Legal Affairs  
and Regulatory Oversight

Date \_\_\_\_\_

GOVERNOR'S STATEMENT OF IMMINENT PERIL  
CERTIFICATION OF IMMINENT PERIL

Kevin M. Ryan, Commissioner, Department of Children and Families, has proposed pursuant to the imminent peril provisions of P.L. 1981, c.27, an Emergency Rule with a Concurrent Proposed Amendment at N.J.A.C. 10:122-5.2(i). The text of this Emergency Rule and Concurrent Proposal and the attached Statement of Imminent Peril, which includes a statement of reasons describing the imminent peril to allowing child care centers to be opened on sites with environmental concerns, have been submitted for my review and concurrence.

I hereby concur with the findings of the Commissioner of the Department of Children and Families that an emergency exists warranting the above described Emergency Rule Adoption at N.J.A.C. 10:122-5.2(i).

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Jon S. Corzine  
Governor

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Date